

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ELIA LEON, individually and as personal
representative of the estate of MARTIN LEON,
deceased,

Plaintiff,

vs.

No. CIV 13-1005 JB/SCY

FEDEX GROUND PACKAGE SYSTEM, INC.,

Defendant.

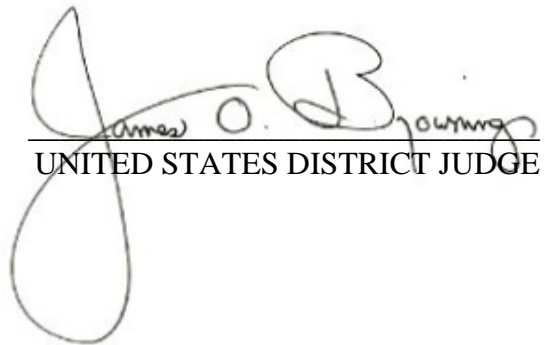
ORDER¹

THIS MATTER comes before the Court on Defendant FedEx Ground Package System, Inc.'s Motion for Reconsideration of Decision to Preclude the Introduction of Testimony from Defense Witness John Smeerdyk, filed February 19, 2016 (Doc. 182). The Court's decision to exclude John Smeerdyk is not a sanction. Defendant FedEx Ground Package System, Inc. did not identify Smeerdyk as a witness until Thursday, February 11, 2016. FedEx Ground did not mention him in its initial disclosures and never amended its initial disclosures. It never identified Smeerdyk as a person who is likely to have relevant information about the case. FedEx Ground did not mention him in the pretrial order. Corporations have lots of people. It is the corporation's responsibility to tell the plaintiff who is likely to have information about the case's subject matter. The Court has reviewed the portion of the two depositions that briefly mention Smeerdyk, and these mentions do not make it obvious that Smeerdyk has information about the accident. Finally, FedEx Ground does not point to any prejudice that it will suffer if Smeerdyk

¹This Order disposes of the Motion for Reconsideration of Decision to Preclude the Introduction of Testimony from Defense Witness John Smeerdyk, filed February 19, 2016 (Doc. 182). The Court will, however, at a later date issue a Memorandum Opinion more fully detailing its rationale for this decision.

does not testify. His testimony is probably largely for FedEx Ground's convenience. If he were a key witness, FedEx Ground and its experienced and sophisticated counsel would have identified him in the initial disclosures or pretrial order. Forcing the Plaintiff to depose Smeerdyk over the weekend before trial would create a considerable burden that outweighs any prejudice that FedEx Ground may suffer.

IT IS ORDERED that the Motion for Reconsideration of Decision to Preclude the Introduction of Testimony from Defense Witness John Smeerdyk, filed February 19, 2016 (Doc. 182), is denied.



UNITED STATES DISTRICT JUDGE

Counsel:

Mark J. Caruso
Caruso Law Offices, PC
Albuquerque, New Mexico

--and--

Paul D. Barber
Barber & Borg LLC
Albuquerque, New Mexico

Attorneys for the Plaintiff

Robert E. Dapper, Jr.
Bryson F. Datt, Jr.
Burns White, Attorneys at Law
Pittsburgh, Pennsylvania

--and--

Brenda M. Saiz
Michael E. Kaemper
Abigail M. Yates
Rodey, Dickason, Sloan, Akin & Robb, PA
Albuquerque, New Mexico

Attorneys for the Defendant